Supreme Court, U.S.
FILED

No. 97-1750 DEC 24 1997

OFFICE OF THE CLERK

In the
UNITED STATES SUPREME COURT
October Term 1997

WARD E. BRYANT, on behalf of Martin Dale Bryant;
ROGETTE D. BRYANT, on behalf of Martin Dale Bryant

Petitioner

v.

CADDO PARISH SCHOOL BOARD,

Respondent

Petition For Writ of Certiorari
To The United States Court of Appeals
For the Second Circuit

PETITION FOR WRIT OF CERTIORARI

A. Michael Boggs (Counsel of Record)
BOGGS & THOMPSON, APLC
2285 Benton Road, Suite A-100
Bossier City, Louisiana 71111
tel: (318) 747-1496
Attorney for Petitioner

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27 pp

QUESTION PRESENTED FOR REVIEW

(1) Whether or not the Court of Appeals failed to apply strict scrutiny to the facts regarding the discrimination alleged by the Plaintiffs, which would require a ruling in favor of Plaintiffs?

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OPINIONS BELOW

The United States District Court for the Western District of Louisiana, Shreveport Division entered a opinion and order granting summary judgment in favor of defendants on January 3, 1997, which opinion is unreported and appears in the appendix at pages A-1-A-10.

The United States Court of Appeals for the Fifth Circuit entered an order denying plaintiff's appeal on September 26, 1997, which is unreported and appears in the appendix at pages A-11-A.12.

STATEMENT OF JURISDICTION

This Writ of Certiorari seeks to review the ruling of the United States Court of Appeals for the Fifth Circuit entered on September 26, 1997. Jurisdiction is founded upon federal law, in particularly 28 U.S.C.A. 1254 and Article III of the United States Constitution.

STATEMENT OF THE CASE

(1) Statement of Proceedings and Disposition in the Courts Below.

Plaintiffs filed their original complaint in this matter on March 13, 1995 seeking to declare the admission policies of the CADDO PARISH SCHOOL BOARD (hereinafter, "CPSB") regarding Caddo Parish Middle Magnet School unconstitutional. Pursuant to the suggestion of the court, Plaintiff and Defendant filed Motions for Summary Judgment on October 1, 1996 and October 15, 1996 respectively. The District Court granted Defendant's Motion for Summary Judgment by order dated January 3, 1997. The United States Fifth Circuit Court of Appeals affirmed the District Court's ruling on September 26, 1997, without rendering a detailed opinion. It from this ruling that the Plaintiffs filed the present writ application.

(2) Statement of Facts.

The Plaintiff, MARTIN DALE BRYANT (hereinafter "BRYANT"), was denied admission to Caddo Parish Middle Magnet

School (hereinafter "CPMM") for the school year of 1994-1995. BRYANT was denied admission despite the fact that his admission test score was higher than that of 111 black students whom gained admission to CPMM. The black students who scored lower than BRYANT gained admission to CPMM due to a preferential admission policy utilized by the Caddo Parish School Board regarding CPMM. This preferential policy is utilized to ensure that a certain minimal percentage of black students gain admission to CPMM each year.

Due the to the discriminatory treatment received by BRYANT, he instituted the present action seeking to enjoin the CPSB from continuing such racial preferences at CPMM and also seeking resulting damages.

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI

1. THE COURT OF APPEALS ERRED IN FAILING TO APPLY A STRICT SCRUTINY ANALYSIS REGARDING THE DISCRIMINATION ALLEGED BY THE PLAINTIFFS,

WHICH WOULD REQUIRE A RULING IN FAVOR OF PLAINTIFF.

As indicated above, BRYANT was denied admission to CPMM due to his race. Preferring members of any one group for no other reason other than race is discrimination which the Constitution forbids. Hopwood v. State of Texas, 78 F.3d 932, (5th Cir. Tex.). Due to the discrimination, BRYANT has instituted this present action asserting a violation of the Equal Protection Clause of the United States Constitution.

The District Court found that Hopwood was not applicable to this matter. In making this ruling, the District Court concluded that since the Consent Decree ordered in Beryl N. Jones, et al. v. Caddo Parish School Board, et.al., Civil Action No. 11,055, United States District Court, Western District of Louisiana, was found to be constitutional when approved by the Court in 1981, Hopwood does not apply. The Court of Appeals affirmed the District Court's ruling, apparently in total agreement therewith.

If the Consent Decree applies to this case, a Strict Scrutiny

analysis must still be applied to the facts. Miller v. Johnson, 115 S.Ct. 2475, 2491 (1995) and Shaw v. Reno, 113 S.Ct. 2816, 2830-31 (1993). With the application of a strict scrutiny analysis, the Plaintiffs must prevail on their discrimination claim. The requirement of strict scrutiny under this situation was clarified in Hopwood at page 954 by the following:

> "even if the law school were specifically ordered to adopt a racial preference program, its implementation at the law school would have to meet the requirements of strict scrutiny."

Under a strict scrutiny analysis, the following two questions must be resolved:

1. Does the racial classification serve a compelling government interest; and

2. Is it narrowly tailored to the achievement of that goal?

Application of strict scrutiny to the facts of the present case reveals the following:

PRONG 1: DOES THE RACIAL CLASSIFICATION SERVE A COMPELLING GOVERNMENT INTEREST?

A. Goal of diverse student body, NOT a compelling government interest.

In determining whether or not the CPSB is serving a compelling government interest with this racial classification, it must be considered whether or not the goal of a diverse student body is sufficient. The Fifth Circuit's opinion in Hopwood indicates that the purpose of achieving a diverse student body is not a compelling interest under the 14th Amendment. Hopwood, *supra* at page 944., and Regents of Univ of Cal. V. Bakke, 438 U.S. 265 (1978). Hopwood further clarifies that the United States Supreme Court has recently decided that there is essential only one compelling state interest to justify a racial classification, that being remedying past wrongs. Hopwood, *supra* at page 944.

B. In analyzing remedying past wrongs, only acts of CPMM should be considered.

In analyzing whether or not the goal of remedying past discrimination is achieved by the CPSB admission policy at CPMM, it must be determined at what level an analysis is made. Hopwood indicates that the analysis must be made of the individual school as to whether or not past discrimination required remedial effort. Thus,

in determining whether remedial efforts are required to justify the racial classification, the past discrimination of CPMM should be analyzed rather than the entire system under the CPSB. As stated in Hopwood, the state's use of remedial racial classifications is limited to the harm caused by the specific state actor. Hopwood, *supra* page 950.

C. In remedial effort required at CPMM?

As indicated above, the only purpose for a racial classification which will qualify as serving a compelling government interest is the purpose of remedying past discrimination. The strict scrutiny analysis is meant to insure that the purpose for the racial classification is remedial. Hopwood, *supra* page 951.

If remedial action is once required, when does it end? The Consent Decree previously referenced was rendered on May 7, 1981 in a proceeding originally instituted on August 18, 1965. BRYANT was born on March 3, 1983. BRYANT was denied admission to CPMM solely based on his race in 1994. Why should BRYANT be penalized and discriminated against to remedy discrimination which occurred many years prior to his birth?

In order to justify the remedial racial classification, there must be some proof of present effects of past discrimination of the type that justifies the racial classification at issue. Hopwood, *supra* page 952. In Hopwood, at page 952, the Court stated as follows regarding the requirement of present effects of past discrimination:

> "To have a present effect of past discrimination sufficient to justify the program, the party seeking to implement the program must, at a minimum, prove that the effect it proffers is caused by the past discrimination and that the effect is of sufficient magnitude to justify the program."

As indicated above, in order for BRYANT to be penalized solely based upon his race, there must be a showing of present effects of past discrimination. Furthermore, according to Hopwood, a showing of the present effects regarding past discrimination must be made as to CPMM and not as to the CPSB system as a whole.

CPSB has been made no showing in this matter that present effects of racial discrimination exist regarding CPMM. No showing has been made because no present effects of discrimination exist. Summary judgment for the Defendant in this matter was improper.

At the very least, the requirement to show present effects of past discrimination creates an issue of material fact requiring a trial.

PRONG 2: IS THE RACIAL CLASSIFICATION NARROWLY TAILORED TOWARD ACHIEVEMENT OF THE GOAL?

In the event that the court concludes that the CPSB does have a sufficient compelling government interest to satisfy the need of the racial classification, the second prong of strict scrutiny must still be satisfied. Under prong 2, it must be shown that the racial classification is narrowly tailored to achieve the goal. As previously referenced, the only goal which can satisfy prong 1 is the goal of remedying past discrimination. Thus, the question now becomes, is the racial classification narrowly tailored to achieve the goal of remedying past discrimination?

How can a classification which discriminates against individuals who were born several years subsequent to the past discrimination be narrowly tailored to achieve the goal of remedying such discrimination. How long must our children be punished in an attempt to correct wrongs over which they have had no control? A classification which punishes innocent children does nothing more

than recultivate and fertilize continuing discriminatory practices. As noted in Hopwood at page 954, racial preferences can compound the problem of a hostile environment.

CONCLUSION

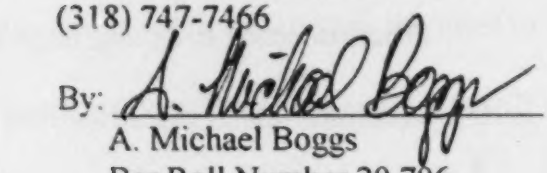
Discrimination is wrong, regardless of who is effected. In certain situations, racial classifications are necessary in order to remedy past discrimination. In order to justify continuation of such discriminatory practices, there must be a showing of present effects of the past discrimination. At some point, we must stop punishing our children for the actions of their ancestors. When does the day arrive in which we decide that our children should be allowed to exist in an environment in which discrimination is not present? BRYANT asserts that the time to eliminate all discrimination is now.

It is clear that the admission policy regarding CPMM is discriminatory. It is clear that BRYANT was denied admission to CPMM solely because of his race. Such a denial is discrimination. The discriminatory policy of admission regarding CPMM should be

terminated.

Respectfully Submitted,

BOGGS & THOMSPON
(A Professional Law Corporation)
2285 Benton Road, Suite A-100
Bossier City, Louisiana 71111
(318) 747-7466

By: 
A. Michael Boggs
Bar Roll Number 20,706

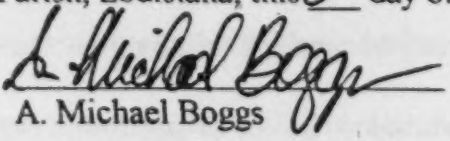
CERTIFICATE

This is to certify that a copy of the above and foregoing Petition for Writ of Certiorari was served, this day, by U.S. Mail, postage prepaid, to:

James S. Denhollem
BEARD & SUTHERLAND
400 Travis Street
Shreveport, LA 71101-5564

Mr. Robert H. Shemwell
Clerk, United States District Court
Western District of Louisiana
500 Fannin Street
Shreveport, Louisiana 71101

Bossier City, Bossier Parish, Louisiana, this 3rd day of April, 1998.


A. Michael Boggs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

MARTIN DALE BRYANT, by his parents, WARD E. BRYANT, JR. and ROGETTE D. BRYANT	:	95-0441
Plaintiffs	:	MEMORANDUM RULING and ORDER
-against-	:	
CADDO PARISH SCHOOL BOARD:	:	
Defendants	:	

APPEARANCES:

For Plaintiff:

BOGGS & THOMPSON
Bossier City, Louisiana
Of Counsel: A. Michael Boggs

For Defendants:

BEARD & SUTHERLAND
Shreveport, Louisiana
Of Counsel: James S. Denhollem

DONALD E. WALTER, United States District Judge

DONALD E. WALTER, United States District Judge:

Plaintiff, Martin Dale Bryant, ("Bryant") and Defendant, Caddo Parish School Board, ("School Board") have both filed a motion for summary judgment in the above captioned matter. For the reasons stated below, Plaintiff's motion for summary judgment is **DENIED;** Defendant's motion for summary judgment is **GRANTED** and Plaintiff's claims are **DISMISSED WITH PREJUDICE.**

BACKGROUND

Bryant applied for admission to Caddo Parish Middle Magnet School ("Middle Magnet") for the 1994-1995 school year. Although he was not accepted into Middle Magnet, he was accepted into Herndon Middle Magnet School ("Herndon Magnet"). Bryant was offered admittance into Middle Magnet for the 1995-1996 school year, but chose to stay at Herndon Magnet.

Middle Magnet and Herndon Magnet are both academic

and performing arts middle magnet schools with the same admissions policy. To qualify for general admission, an applicant must be performing at his grade level, score at the fiftieth percentile or better on standardized achievement test, have a 2.0 GPA or better in reading and math, have a 2.5 GPA overall and exhibit positive work habits and conduct ("C" or better). Once applicants qualify for general admission, the schools rank the qualified applicants using each student's standardized test scores on the California Achievement Test ("CAT").

Both schools' admissions policies are based on the 1981 Consent Decree ("Consent Decree") approved by this Court in Beryl N. Jones, et al v. Caddo Parish School Board, et al, Civil Action No. 11,055. The Consent Decree requires, among other things, that some applicants be given priority over others. Under the Consent Decree, the following applicants are given priority: qualified siblings of students who attend a middle magnet school; qualified black

applicants who would be attending schools with over 90% black student enrollment and qualified white applicants who would be attending schools with over 65% white student enrollment. However, the priorities apply only where the admission of such students will not interfere with 'the enrollment goals of each school. Middle Magnet's enrollment goal is 50% plus or minus 15% black/white. Herndon Magnet's enrollment goal is 50% plus or minus 20% black/white. Bryant, however, was not given priority because he would be among the minority race in the school district in which he resides and where he would normally attend middle school.

Unfortunately, the available spaces for qualified individuals are limited. Therefore, those qualified applicants who do not score as a high as others on the CAT, are placed on a waiting list. Bryant fell into this category. Although Bryant qualified for general admission,, he did not score high enough on the CAT to qualify for one of the available spaces

and was placed on a waiting list. Bryant was sixty-sixth on the waiting list.

As a result, Plaintiffs, Ward E. Bryant, Jr. and Rogette D. Bryant, on behalf of their minor son, Martin Dale Bryant, filed this complaint on March 13, 1995, against the School Board seeking declaratory, injunctive and compensatory relief along with attorneys' fees and costs under the fourteenth Amendment to the United States Constitution, 42 U.S.C. 1981, 1983 and 1988,, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 200(d), Supremacy Clause of the United States Constitution and Article One of the Louisiana Constitution alleging that Bryant was discriminated against in admission to the Caddo Parish Middle Magnet School on the basis of his race for the 1995-1996 school year. Both parties have filed motions for summary judgment.

LAW AND ANALYSIS

Under FED R. Civ. P. 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The court must "review the facts drawing all inferences most favorable to the party opposing the motion." Reid v. State Farm Mut. Auto Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986).

The party seeking summary judgment has the initial responsibility of informing the court of the basis for its motion, and identifying those parts of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). Material facts are those that will affect the outcome of the lawsuit. Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). The moving party need not produce evidence negating the existence of a material fact, but need only point out the absence of evidence supporting the nonmoving party's case. Celotex, 477 U.S. at 325; Fontenot v. Upjohn Co., 780 F.2d 1190, 1195 (5th Cir. 1986).

If the moving party carries his initial burden the burden then falls upon the nonmoving party to demonstrate the existence of a genuine issue of a material fact. This showing requires more than "some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, summary judgment is appropriate. Id.; see Boeing Company v. Shipman, 411 F.2d 3674 (5th Cir. 1969)(en ban).

Bryant claims there is not genuine issue of triable fact in the instant case because under the Fifth Circuit's recent ruling in Hopwood v. State of Texas 78 F.3d 932 (5th Cir. 1996) preferring members of one group for no other reason than race or ethnic origin is discriminatory and thus unconstitutional under the equal protection clause.

However, unlike Caddo Parish schools, which includes Middle Magnet, the University of Texas Law School ("Law School") does not have a proven history of overt sanctioned

racial discrimination. Hopwood, 78 F.3d at 951. The only compelling state interest that justifies racial classifications is the remedying of past wrongs. Id. at 944. The admissions program in Hopwood did not pass the strict scrutiny test because the Law School could not produce any evidence of present effects of past discrimination on its part. In other words, the admissions program in Hopwood, which preferred black and Hispanic applicants over white applicants, was not enacted to remedy past acts of racial discrimination, but because the Law School thought affirmative action was a good idea. Thus the Law School's preferential admissions program could not be remedial in nature. Id. at 951-952. Middle Magnet, on the other hand, as well as other Caddo Parish schools, have a proven history of racial discrimination. The Consent Decree, which is specifically designed to remedy the effects of past discrimination, was found to be constitutional when this Court approved it in 1981. Therefore, Hopwood, does not apply to the present case.

Bryant further argues that the Consent Decree is no longer applicable because it was terminated in 1990 when this Court declared that the Consent Decree had been implemented and complied with. Bryant fails to mention, however, that this Court did not hold that Part I, Section F-Faculty and Staff; Part II, Section E-Remaining One-Race Schools; and Part II, Section F-Majority to Minority Transfers- of the Consent Order had been fully implemented and complied with. Furthermore, Bryant has failed to produce any evidence demonstrating that the Caddo Parish School system has fully implemented and complied with the remaining sections of the Consent Decree. Thus, the Caddo Parish public school system has not been declared unitary and the Consent Decree still applies to the Caddo Parish Schools which, of course, includes Middle Magnet.

Middle Magnet's admissions program is structured in accordance with the Consent Decree so that it may attain its enrollment goal of 50% plus or minus 15% black/white. The

use of enrollment goals in magnet schools to promote desegregation is constitutional. See Davis v. Baton Rouge Parish School Board, 721 F.2d 1425, 1440 (5th Cir. 1983) and Swann v. Charlotte-Mecklenbura Board of Education, 91 S.Ct. 1267, 402 U.S. 1, 49 L.Ed.2d 554. Thus Middle Magnet's admissions policy is constitutional and in compliance with the Consent Decree. Accordingly, the School Board did not discriminate against Bryant by denying him admission to Middle Magnet based on the present admissions policy.

For the reasons stated above, Bryant's motion for summary judgment is DENIED. Defendant Caddo Parish School Board's motion for summary judgment is GRANTED and Bryant's claims are DISMISSED WITH PREJUDICE.

Dated: Shreveport, Louisiana
January 2, 1997

/s/
DONALD E. WALTER
United States District Judge

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

SUMMARY CALENDAR

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANYU OTHER COURT. BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A COLLATERAL ESTOPPEL OR RES JUDICATA

Present: HONORABLE DUHE'
HONORABLE DeMOSS
HONORABLE DENNIS

Circuit Judges

MARTIN DALE BRYANT, by his parents, WARD E. BRYANT, JR. and ROGETTE D. BRYANT
Plaintiff- Appellant,

v. No. 97-30135

CADDO PARISH SCHOOL BOARD
Defendants-Appellees

For plaintiff-appellant:
A. Michael Boggs, BOGGS & THOMPSON
Bossier City, Louisiana

For defendants-appellees:
James S. Denhollem, BEARD & SUTHERLAND
Shreveport, Louisiana

Appeal from the United States District Court for the Western District of Louisiana
(Walter, D.)

We have carefully reviewed the briefs, the record excerpts and relevant portions of the record itself. For the reasons stated by the district court in its memorandum ruling and Order filed under date of January 3, 1997, we are satisfief that the Summary Judgment granted by the district court in favor of Caddo Parish School Board should not be and is now

AFFIRMED.

/s/
HON. DUHE'

/s/
HON. DeMOSS

/s/
HON. DENNIS

Circuit Judges